IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 23 OF 2006

Commissioner of Customs (Imp.) .. Appellant

V/s

M/s P. Bhavesh .. Respondent

Ms. N.V. Masurkar with Mr.Y.R. Mishra for the Appellant.
Mr.Anil Badani for the Respondent.

CORAM : H.L. GOKHALE & V.R. KINGAONKAR, JJ.

DATE : 20TH JULY 2006

P.C. :

1. Appeal is admitted. Both the counsel are heard.

2. The Appellant had filed an appeal to the Tribunal against the order passed by the Commissioner of Customs (Appeal) dated 6h May 2005 setting aside the enhancement of the price of the imported consignment from $ 1250 per M.T. to $ 1750 per M.T. According to the application made to the Tribunal, there was a delay of 70 days in filing that appeal and the delay was caused since the files of the department were mixed up. That was the ground given to show sufficient cause for condonation, which was rejected by the Tribunal. Being aggrieved by that order whereby the Appeal was dismissed, this further Appeal has been filed.

3. As far as the powers of the Tribunal to condone delay are concerned, section 129A(5) of the Customs Act, 1962 permits the Appellate Tribunal to admit an appeal after the expiry of the period provided under sub-section (3) or (4) if it is satisfied that there is sufficient cause. Sub-section (3) provides for a period of 3 months for filing an appeal.

4. Mr.Badani for the Respondent points out that the delay was not of 70 days, but was of 83 days. Ms.Masurkar for the Appellant submits, as stated above, that the delay was caused because of the mixing up of the files and that ought to have been condoned.

5. Mr.Badani, on the other hand, points out that the impugned order records that there was large gap at different stages in the decision making process of the authorities of the Appellant. The authorisation letter also did not bear any date. It was therefore that the Tribunal had dismissed the Appeal as time barred and rightly so.

6. As far as these submissions are concerned, we quite see the force in what Mr.Badani canvassed. The department must move quickly and various steps that are required to be taken must be taken within the time

provided and that appropriate authorities must issue the necessary authorisation. Having said that, we must also note that due to the manner in which the Government offices function, there are occasions when delay is caused.

7. The Appellant relies upon a judgment of the Apex Court in the case of **State of Nagaland v. Lipok AO - 2005 (183) E.L.T. 337 (S.C.)**, where the Apex Court has referred to a number of judgments and has observed that some latitude is permissible due to the procedural red tape in Government functioning and also on account of the fact that if appeal is dismissed, it is the public interest which suffers. In view of this proposition laid down by the Apex Court, in our view, the Tribunal was in error in rejecting the application for condonation of delay. We therefore allow this Appeal setting aside the order passed by the Tribunal declining to condone the delay. We hereby allow the application seeking condonation of delay. Now the Appeal will come up for admission before the Tribunal on 28th August 2006 as requested by parties.

8. Appeal is allowed in above terms. There will be no order as to costs.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)